



9111-14

**DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION**

**TEST TO COLLECT BIOMETRIC INFORMATION AT UP TO TEN U.S.
AIRPORTS (“BE-MOBILE AIR TEST”)**

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: U.S. Customs and Border Protection (CBP) intends to conduct a test to collect biometric and biographic information from certain aliens who are departing the United States on selected flights from up to ten identified U.S. airports. This notice describes the test, its purpose, how it will be implemented, the individuals covered, the duration of the test, where the test will take place, and the privacy considerations. This test will not apply to U.S. citizens.

DATES: The test will begin no earlier than July 6, 2015, and will run for approximately one year. The test will be rolled out over this one-year period at up to ten of the following airports: Los Angeles International Airport, Los Angeles, California; San Francisco International Airport, San Francisco, California; Miami International Airport, Miami, Florida; Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia; Chicago O’Hare International Airport, Chicago, Illinois; Newark Liberty International Airport, Newark, New

Jersey; John F. Kennedy International Airport, Jamaica, New York; Dallas Fort Worth International Airport, Dallas, Texas; George Bush Intercontinental Airport, Houston, Texas; and Washington Dulles International Airport, Sterling, Virginia.

FOR FURTHER INFORMATION CONTACT: Edward Fluhr, Assistant Director, Entry/Exit Transformation Office, U.S. Customs and Border Protection, by phone at (202) 344-2377 or by email at edward.fluhr@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION

BACKGROUND

The US-VISIT Program

The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program in accordance with several federal statutory mandates requiring DHS to create an integrated, automated entry and exit system that records the arrival and departure of aliens, verifies the aliens' identities, and authenticates aliens' travel documents through the comparison of biometric identifiers. Under these various federal statutory mandates, certain aliens may be required to provide biometrics (including digital fingerprint scans, photographs, facial and iris images, or other biometric identifiers¹) upon arrival in, or departure from, the United States.

¹ As used in this notice, a "biometric identifier" is a physical characteristic or other physical attribute unique to an individual that can be collected, stored, and used to verify the identity of a person who presents himself or herself to a CBP officer at the border. To verify a person's identity, a similar physical characteristic or attribute is collected and compared against the previously collected identifier.

On March 16, 2013, US-VISIT's entry and exit operations, including deployment of a biometric exit system, were transferred to U.S. Customs and Border Protection (CBP). See Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113-6, 127 Stat. 198 (2013). The Act also transferred the US-VISIT Program's overstay analysis function to U.S. Immigration and Customs Enforcement (ICE) and its biometric identity management services to the Office of Biometric Management (OBIM), a newly-created office within the National Protection and Programs Directorate. CBP assumed responsibility for operating biometric entry and implementing biometric exit programs on April 1, 2013.

Since the transfer of US-VISIT's entry and exit operations to CBP, CBP has continued to consider ways to collect biometric information from departing aliens. This notice announces that CBP will be conducting the Biometric Exit Mobile (BE-Mobile) Air Test at up to ten of the identified U.S. airports. In this test, CBP officers will utilize wireless handheld devices to collect biographic and biometric information from certain aliens upon departure, biometrically record their departure, and screen their biometric data against a DHS biometric database² in real time. This notice describes the BE-Mobile Air Test, its purpose, how it will be implemented, the individuals covered, the duration of the test, where the test will take place, and the privacy considerations.

² See the Privacy Impact Assessment at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection> for more information about the databases where the biometric and biographic information will be maintained.

Legal Authority

The federal statutes that mandate DHS to create a biometric entry and exit system to record the arrival and departure of certain aliens include, but are not limited to:

- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106-215, 114 Stat. 337 (2000);
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106-396, 114 Stat. 1637, 1641 (2000);
- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56, 115 Stat. 272, 353 (2001);
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107-173, 116 Stat. 543, 552 (2002);
- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, 118 Stat. 3638, 3817 (2004); and
- Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-52, 121 Stat. 266 (2007).

Section 7208 of the IRTPA, as codified at 8 U.S.C. 1365b, specifically requires that DHS's entry and exit data system collect biometric exit data for all categories of individuals who are required to provide biometric entry data.

On January 5, 2004, DHS published an interim final rule (IFR) in the **Federal Register** (69 FR 468) implementing the first phase of US-VISIT at specified air and sea ports of entry. This IFR amended section 235.1 of title 8 of the Code of Federal Regulations (CFR) (8 CFR 235.1) to authorize the Secretary to require certain aliens seeking admission into the United States through nonimmigrant visas to provide fingerprints, photographs, or other biometric identifiers to CBP upon arrival in, or departure from, the United States at air or sea ports of entry.³ The specified air and sea ports of entry where such collection of biometric information was to occur were designated by notice in the **Federal Register**. 69 FR 482 (January 5, 2004). DHS also published two additional notices expanding the list of designated air and sea ports. See 69 FR 46556 (August 3, 2004) and 69 FR 51695 (August 20, 2004). Since then, aliens who are required under federal law to submit biometric information have been submitting fingerprints and photographs upon entry to the United States at designated air and sea ports of entry. The DHS biometric entry program is now operational at 15 sea ports and 115 airports including the identified airports selected for the BE-Mobile Air Test.

The second phase of US-VISIT was implemented on August 31, 2004 when DHS published an IFR in the **Federal Register** (69 FR 53318) expanding the program to the fifty most highly trafficked land border ports-of-entry in the United States as required by 8 U.S.C. 1365a(d)(2).⁴ The IFR also amended 8 CFR 215.8 to provide that the Secretary, or his designee, may establish pilot programs to collect biometric information from

³ The IFR also authorized the Secretary to establish pilot programs at up to fifteen air or sea ports of entry, to be identified by notice in the **Federal Register**, through which DHS may require certain aliens who depart from a designated air or sea port of entry to provide specified biometric identifiers and other evidence at the time of departure.

⁴ Section 1365a(d)(2) provides, in pertinent part, that “[n]ot later than December 31, 2004, the Attorney General [now the Secretary of Homeland Security] shall implement the integrated entry and exit data system . . . at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens.”

certain aliens departing the United States at land border ports of entry, and at up to fifteen air or sea ports of entry designated through notice in the **Federal Register**. Specifically, 8 CFR 215.8(a)(1) provides that the Secretary, or his designee, may establish pilot programs through which the Secretary or his delegate may require an alien who departs the United States from a designated port of entry to provide fingerprints, photographs or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States. The IFR also specified that nonimmigrants seeking to enter the United States without a visa under the Visa Waiver Program (VWP) are also required to provide biometric information to DHS.⁵

Previous Air Exit Pilots

Pursuant to the authority in 8 CFR 215.8, on June 3, 2009, DHS published a notice in the **Federal Register** (74 FR 26721) announcing the commencement of two air exit pilot programs.⁶ In one of the pilot programs, CBP collected biometric information from certain aliens at or near the departure gate at the Detroit/Metropolitan Wayne County Airport in cooperation with Northwest Airlines. CBP collected biometric information from aliens departing the United States for foreign destinations who were subject to the biometric screening requirements. The biometric collection consisted of one or more electronic fingerprints captured using a mobile or portable device. CBP also collected biographic information, including travel document information, such as name,

⁵ On December 19, 2008, DHS published a final rule in the **Federal Register** (73 FR 77473) which finalized the IFR without change.

⁶ DHS also conducted air exit pilot programs at various ports of departure, in 2004, including Baltimore-Washington International Airport (BWI), pursuant to the authority in 8 CFR 215.8.

date of birth, document issuance type, country and number from these aliens. CBP stored and forwarded the departure records collected to a DHS database daily.

In the second pilot program, Transportation Security Administration (TSA) collected biometric and biographic information from certain aliens at the security checkpoint at the Atlanta/Hartsfield International Airport. Aliens departing the United States for foreign destinations who were subject to biometric screening requirements were directed to an area within the checkpoint where the biographic and biometric information was collected. The biometric collection consisted of one or more electronic fingerprints captured using a mobile or portable device. TSA also collected biographic information, including travel document information, such as name, date of birth, document issuance type, country and number from these aliens. TSA stored and forwarded the departure records collected to a DHS database daily.

These pilot programs concluded on July 2, 2009. Although the technology used in these pilot programs worked, DHS concluded that these collection mechanisms would be extremely resource intensive and very costly to implement long-term or at additional airports. Therefore, DHS did not expand or extend the pilots.

The Biometric Exit Mobile Air Test (“BE-Mobile Air Test”)

The BE-Mobile Air Test is designed to test both a new biometric exit concept of operations at selected airports with CBP officers using a wireless handheld device at the departure gate to collect biometric and biographic data and CBP’s outbound enforcement policies and workforce distribution procedures. This test will significantly differ from the 2009 pilot conducted by CBP in that the BE-Mobile Air Test will use improved technology, will enable CBP officers to receive real time information, will test a different

concept of operations since law enforcement officers can perform checks in real time, and will be less resource intensive because CBP will conduct the test on fewer flights per week than during the 2009 pilot. Through the test, CBP will be able to conduct a statistically valid survey of the air outbound environment that will assist DHS in determining how to effectively implement an air biometric exit system. The BE-Mobile Air Test is one of CBP's key steps in developing the capability to fulfill DHS' mandate to collect biometric information from certain arriving and departing aliens.

Identified Airports

CBP will conduct the BE-Mobile Air Test at up to ten of the following airports:

- Los Angeles International Airport, Los Angeles, California;
- San Francisco International Airport, San Francisco, California;
- Miami International Airport, Miami, Florida;
- Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia;
- Chicago O'Hare International Airport, Chicago, Illinois;
- Newark Liberty International Airport, Newark, New Jersey;
- John F. Kennedy International Airport, Jamaica, New York;
- Dallas Fort Worth International Airport, Dallas, Texas;
- George Bush Intercontinental Airport, Houston, Texas;
- Washington Dulles International Airport, Sterling, Virginia.

The airports selected for the BE-Mobile Air Test will be identified on the CBP website, <http://www.cbp.gov>.

Description, Purpose and Implementation

Currently, certain aliens seeking admission into the United States may be required to provide fingerprint and photographic biometric data at ports of entry, including at the ten identified airports. This data is used by CBP to verify the aliens' identities. (Certain aliens, including individuals traveling on A or G visas and others as specified in 8 CFR 235.1(f)(1)(iv), are exempt from this requirement).

The BE-Mobile Air Test will be conducted at the identified airports on pre-selected outbound international flights. Flights will be pre-selected on a random basis or chosen to correspond with existing outbound enforcement operations. For the selected flight, CBP officers will deploy to the departure gate and position themselves near the departing passenger loading bridge to collect certain data from certain departing travelers. Once travelers begin the departure process, CBP officers will review the traveler's travel document (passport, visa, lawful permanent resident card, or other qualifying travel document) to determine if the traveler is an alien who is required to submit biometric information at the time of departure as described in the next section, entitled "Aliens Covered." If so, the CBP officers will obtain biographic data from these select aliens by swiping or inputting the information from the alien's travel document on a wireless handheld device.⁷ The biographic data collected during this test will be used to create a biographic-based departure record in a CBP biographic database. It will be paired with the biometric data collected to create a complete, biometrically-based departure record for that alien. The CBP officer will also capture two of the alien's fingerprints and verify the fingerprints against the alien's biometric identity record.

⁷ Air carriers will continue to report traveler information through the Advance Passenger Information System (APIS).

Based on the results of the verification or additional law enforcement information, the officer may then perform additional analysis or conduct a further interview to determine if additional action may be appropriate. When the departure inspection is complete, the results of the transaction will be recorded in a DHS biometric database and a CBP biographic database in real time.

The primary mission of any biometric exit program is to provide assurance of traveler identity on departure, giving CBP the opportunity to match the departure with a prior arrival record. This capability enhances the integrity of the immigration system and the ability to accurately detect travelers that have overstayed their lawful period of admission to the United States.

CBP will analyze and evaluate the test's performance based on a number of criteria, including the occurrence of watchlist matches based on biometric data, the occurrence of biometric-identified fraud, the occurrence of inaccurate APIS manifests, how overstay calculations are impacted, the transaction times for exit processing per traveler, the rate of successful transactions, the occurrence of law enforcement hits, including those requiring referral to secondary inspection, the observations from the CBP officers performing the test, and system performance. CBP will use the results of the BE-Mobile Air Test to determine strategic programmatic requirements for a comprehensive biometric exit solution.

Aliens Covered

For the duration of the test, aliens must provide the biometric information described above at the time of departure of the selected international flights at one of the selected airports, except for aliens exempt pursuant to 8 CFR 215.8(a)(2) provided that the alien is in exempted status on the date of departure.

Exempted aliens include:

- (1) Canadian citizens who under section 101(a)(15)(B) of the Immigration and Nationality Act are not otherwise required to present a visa or have been issued Form I-94 (see § 1.4) or Form I-95 upon arrival at the United States;
- (2) Aliens admitted on A-1, A-2, C-3 (except for attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visas, and certain Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas who are maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to this notice;
- (3) Children under the age of 14;
- (4) Persons over the age of 79;
- (5) Classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt; or
- (6) An individual alien whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt.

Duration of the Test

CBP will collect biographic information and fingerprint data from select non-exempt aliens departing on selected international flights from the identified airports for a period of approximately one year from the start of the test. The information collected will constitute a departure record for that alien and will be maintained in the CBP and DHS databases for recording entries and departures.

Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this test. Additionally, CBP will be issuing a Privacy Impact Assessment (PIA), which will outline how CBP will ensure compliance with Privacy Act protections. The PIA will examine the privacy impact of the BE-Mobile Air Test as it relates to DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA will address issues such as the security, integrity, and sharing of data, use limitation and transparency. Once issued, the PIA will be made publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>. CBP has also issued an update to the DHS/CBP-007 Border Crossing Information (BCI) System of Records, which fully encompasses all the data that is being collected at the selected airports. The system of records notice (SORN) was published in the **Federal Register** on May 11, 2015 (80 FR 26937).

Paperwork Reduction Act

CBP requires aliens subject to this notice to provide biometric and biographic data at the airports selected for the test in the circumstances described above. This requirement is considered an information collection requirement under the Paperwork Reduction Act (44 U.S.C. § 3501, et seq.). The Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB control number for this collection is 1651-0138.

DATE: July 22, 2015

R. Gil Kerlikowske,
Commissioner.

[FR Doc. 2015-18418 Filed: 7/27/2015 08:45 am; Publication Date: 7/28/2015]